

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

IN RE:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION,

Debtor.

PROMESA

Title III

No. 17 BK 3284-LTS

This filing relates to COFINA only

**THE BANK OF NEW YORK MELLON'S INFORMATIVE MOTION
REGARDING JANUARY 16, 2019, 19.5 DISPUTE HEARING**

¹ The Debtors in these title III cases, along with each Debtor's respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

The Bank of New York Mellon (“BNYM”), as trustee, through its undersigned counsel, hereby submits this informative motion, pursuant to the Court’s *Order Regarding Procedures for Attendance, Participation and Observation of January 16, 2019 Hearing Regarding (1) the 9019 Settlement Approval Motion, (2) COFINA Plan of Adjustment Confirmation Motion, and (3) Dispute Regarding Section 19.5 of the Plan* [Doc. No. 431],² and respectfully states as follows:

1. On December 19, 2018, the Court entered its *Order Granting Urgent Consensual Motion for Entry of an Order Establishing Procedures Regarding Section 19.5 of the COFINA Plan of Adjustment* [Doc. No. 394] (the “Procedures Order”). Pursuant to the Procedures Order, on January 2, 2019, BNYM filed the Declaration of Daniel P. Goldberg [Doc. No. 412-1] (the “Goldberg Declaration”), and the Declaration of Robert M. Fishman [Doc. No. 413-1] (the “Fishman Declaration,” and together with the Goldberg Declaration, the “Declarations”).

2. On January 9, 2019, Ambac Assurance Corporation (“Ambac”) filed the *Memorandum of Ambac Assurance Corporation in Response to Declarations of The Bank of New York Mellon Pursuant to Section 19.5 of COFINA’s Amended Title III Plan of Adjustment* [Doc. No. 437] (the “Ambac Response”).

3. On January 10, 2019, Ambac and Whitebox Multi-Strategy Partners, L.P. and certain of its affiliates (“Whitebox”) are scheduled to depose BNYM’s declarants, Daniel P. Goldberg and Robert M. Fishman (the “Depositions,” and together with the Declarations and the Ambac Response, the “Relevant Documents”).

² Docket citations are to Case No. 17 BK 3284-LTS unless otherwise noted.

4. On January 16, 2019, at 9:30 a.m., the Court will hear oral argument (the “Hearing”) in connection with, inter alia, the dispute regarding obligations in connection with Section 19.5 of the COFINA Plan of Adjustment, as provided for in the Procedures Order.

5. Insofar as the Court will consider the assertions in the Ambac Response as statements of fact at the Hearing, BNYM is entitled to depose a witness or witnesses in connection with any such factual statements prior to the Hearing, and to cross-examine such witness or witnesses at the Hearing. No witness has been identified by Ambac in that regard. Such statements should be disregarded.

6. In addition to any cross-examination described in the prior paragraph, BNYM wishes to present live rebuttal testimony at the Hearing, including, but not limited to, as follows:

Witness	Factual issue(s) to which the proposed testimony relates	Subject matter of the testimony and its relevance to the factual issue(s)	Time requested for such testimony
Daniel P. Goldberg	1. The reasonableness of the amounts estimated by Mr. Goldberg for BNYM’s defense of the Ambac Action and the Whitebox Action (the “ <u>Fee Estimate</u> ”).	Mr. Goldberg will testify regarding the statements in the Relevant Documents, including, but not limited to: 1. Mr. Goldberg’s conclusion that the Fees Estimate is reasonable, including all aspects of the analysis he conducted and the conclusions he made.	Total: 45 minutes

Witness	Factual issue(s) to which the proposed testimony relates	Subject matter of the testimony and its relevance to the factual issue(s)	Time requested for such testimony
	<p>2. The effect on the Fee Estimate of prior litigation in which the parties have already engaged.</p> <p>3. The reasonableness of the attorney team assumed in the Fee Estimate.</p> <p>4. The specifics of the fee arrangement between BNYM and Reed Smith.</p>	<p>2. The Fee Estimate adequately accounts for the prior litigation in which the parties have already engaged, including BNYM's motion for summary judgment, prior discovery work, and legal analysis in the Interpleader Action, particularly in light of the uncertainty surrounding the Anticipated Litigation and broader scope of issues that will be addressed.</p> <p>3. The seniority and leverage of the attorney team assumed for purposes of the Fee Estimate is reasonable, particularly in light of the weighting exercise Mr. Goldberg undertook.</p> <p>4. The Fee Estimate reasonably assumes an hours-based representation by counsel for BNYM and uses the Reed Smith team identified as a reasonable proxy for a defense team for the Anticipated Litigation.</p>	

Witness	Factual issue(s) to which the proposed testimony relates	Subject matter of the testimony and its relevance to the factual issue(s)	Time requested for such testimony
Robert M. Fishman	<p>1. The reasonableness of the Fee Estimate.</p> <p>2. The reasonableness of the attorney team assumed in the Fee Estimate.</p> <p>3. The appropriate form of replacement security to be provided to BNYM.</p>	<p>Mr. Fishman will testify concerning the statements in the Relevant Documents, including, but not limited to:</p> <p>1. Mr. Fishman's opinion, based on his experience, that the Fee Estimate is reasonable.</p> <p>2. In Mr. Fishman's experience, the seniority and leverage of the attorney team assumed for purposes of the Fee Estimate is reasonable, particularly in light of the weighting exercise Mr. Goldberg undertook in the Fee Estimate.</p> <p>3. A bond does not adequately protect BNYM's interests.</p>	Total: 45 minutes

7. BNYM further reserves the right to present live rebuttal testimony at the Hearing in response to cross-examination of Mr. Goldberg and/or Mr. Fishman by the Court, Ambac, Whitebox, and/or any other party.

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WHEREFORE, BNYM respectfully requests that the Court permit BNYM to present live rebuttal testimony by the witnesses and according to the scope described herein.

Dated: January 10, 2019
San Juan, Puerto Rico

Respectfully submitted,

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